



OFFICE OF THE POLICE COMMISSIONER

ONE POLICE PLAZA • ROOM 1400

August 19, 2011

Memorandum for: Deputy Commissioner, Trials

Re: **Lieutenant Alvin Gomez**  
Tax Registry No. 906355  
114<sup>th</sup> Precinct  
Disciplinary Case Nos. 84609/08 & 86119/10

The above named member of the service appeared before Assistant Deputy Commissioner John Grappone on July 28, 2010 and was charged with the following:

**DISCIPLINARY CASE NO. 84609/08**

1. Said Lieutenant Alvin Gomez, assigned to the 114<sup>th</sup> Precinct, on or about and between January 2007 and May 23, 2008, when assigned as the Platoon Commander, failed to inspect the command facility, to wit: the Evidence/Property room, Lieutenant's dormitory, and the garage and bike sheds; failed to evaluate effectiveness of assignments, to wit: Police Officer Bing's performance as Evidence/Property Control Specialist; and failed to address the integrity issues surrounding the commands handling of seized evidence and property.

**P.G. 202-13, Page 1, Paragraphs 15(a) and 17**

**PLATOON COMMANDER**

2. Said Lieutenant Alvin Gomez, assigned to the 114<sup>th</sup> Precinct, on or about and between January 2007 and May 23, 2008, when assigned as the Desk Officer, failed to inspect the property locker and all areas within the command where invoiced property was being held, and failed to inspect and ensure that property was properly invoiced.

**P.G. 202-14, Page 1, Paragraph 8**

**DESK OFFICER**

3. Said Lieutenant Alvin Gomez, assigned to the 114<sup>th</sup> Precinct, on or about and between January 2007 and May 23, 2008, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Lieutenant Gomez failed to take corrective action regarding the commands handling of property and/or evidence.

**P.G. 203-10, Page 1, Paragraph 5**

**PROHIBITED CONDUCT**

**LIEUTENANT ALVIN GOMEZ**  
**DISCIPLINARY CASE NOS. 84609/08 86119/10**

**DISCIPLINARY CASE NO. 86119/10**

1 Lieutenant Alvin Gomez, assigned to the 114<sup>th</sup> Precinct, on or about November 1, 2008, failed to immediately respond to a "10-13" radio transmission that the Central Communications Division directed to him

P.G. 202-17, Page 1, Paragraph 2

**PATROL SUPERVISOR  
DUTIES AND RESPONSIBILITIES**

2 Lieutenant Alvin Gomez, assigned to the 114<sup>th</sup> Precinct, on or about November 1, 2008, while serving as a Patrol Supervisor, failed to properly supervise in that he failed to respond to a "10-13" radio run that involved an off-duty, uniformed member of the service. (As amended)

P.G. 212-32, Page 1, Paragraphs 3-4

**OFF-DUTY INCIDENTS INVOLVING  
UNIFORMED MEMBERS OF SERVICE  
COMMAND OPERATIONS**

P.G. 202-17, Page 1, Paragraphs 1-2

**PATROL SUPERVISOR  
DUTIES AND RESPONSIBILITIES**

3 Lieutenant Alvin Gomez, assigned to the 114<sup>th</sup> Precinct, on or about November 1, 2008, while serving as a Patrol Supervisor, failed to conduct an investigation of a dispute that involved an off-duty member of the service

P.G. 202-17, Page 1, Paragraph 9

**PATROL SUPERVISOR  
DUTIES AND RESPONSIBILITIES**

4 Lieutenant Alvin Gomez, assigned to the 114<sup>th</sup> Precinct, on or about November 1, 2008, while serving as a Patrol Supervisor, failed to keep the platoon commander or desk officer notified of a dispute that involved an off-duty member of the service

P.G. 202-17, Page 1, Paragraph 19

**PATROL SUPERVISOR  
DUTIES AND RESPONSIBILITIES**

5 Lieutenant Alvin Gomez, assigned to the 114<sup>th</sup> Precinct, on or about November 1, 2008, while serving as a Patrol Supervisor, failed to acknowledge a "10-13" radio run directed to him by the Communications Section involving an off-duty member of the service (As amended)

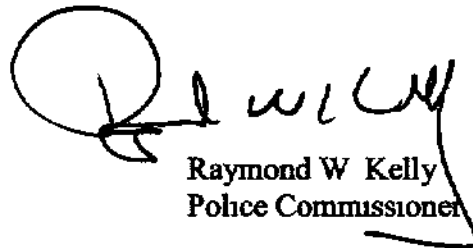
P.G. 202-17, Page 1, Paragraph 16

**PATROL SUPERVISOR  
DUTIES AND RESPONSIBILITIES**

**LIEUTENANT ALVIN GOMEZ**  
**DISCIPLINARY CASE NOS. 84609/08 86119/10**

In a Memorandum dated January 11, 2011, Assistant Deputy Commissioner Grappone accepted the Respondent PLEADING GUILTY to Specification Nos 1, 2 and 3 in Disciplinary Case No 84609/08, and Dismissed Specification Nos 1 and 4 and found the Respondent Not Guilty of Specification Nos 2, 3, and 5 in Disciplinary Case No 86119/10. Having read the Memorandum and analyzed the entire facts of these instant matters, I approve the findings, but disapprove the recommended penalty of the forfeiture of 10 Vacation days.

As primarily a platoon commander and desk officer, the Respondent's malfeasance and failure to inspect and take corrective action empowered, and contributed, to the ongoing improper intake and handling of property evidence. As such, a greater penalty is merited. Consequently, the disciplinary penalty for these matters shall be the forfeiture of thirty (30) Vacation days.



Raymond W. Kelly  
Police Commissioner





POLICE DEPARTMENT

January 11, 2011

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Alvin Gomez  
Tax Registry No. 906355  
114 Precinct  
Disciplinary Case Nos. 84609/08 & 86119/10  
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The above-named member of the Department appeared before me on July 28, 2010 and September 9, 2010, charged with the following:

Disciplinary Case No. 84609/08

1. Said Lieutenant Alvin Gomez, assigned to the 114 Precinct, on or about and between January 2007 and May 23, 2008, when assigned as the Platoon Commander, failed to inspect the command facility, to wit: the Evidence/Property room, Lieutenant's dormitory, and the garage and bike sheds; failed to evaluate effectiveness of assignments, to wit: Police Officer Bing's performance as Evidence/Property Control Specialist; and failed to address the integrity issues surrounding the commands handling of seized evidence and property.

P.G. 202-13, Page 1, Paragraphs 15(a) and 17 – PLATOON COMMANDER

2. Said Lieutenant Alvin Gomez, assigned to the 114 Precinct, on or about and between January 2007 and May 23, 2008, when assigned as the Desk Officer, failed to inspect the property locker and all areas within the command where invoiced property was being held, and failed to inspect and ensure that property was properly invoiced.

P.G. 202-14, Page 1, Paragraph 8 – DESK OFFICER

3. Said Lieutenant Alvin Gomez, assigned to the 114 Precinct, on or about and between January 2007 and May 23, 2008, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Lieutenant Gomez failed to take corrective action regarding the commands handling of property and/or evidence.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

COURTESY • PROFESSIONALISM • RESPECT

Disciplinary Case No 86119/10

1 Lieutenant Alvin Gomez, assigned to the 114<sup>th</sup> Precinct, on or about November 1, 2008, failed to immediately respond to a "10-13" radio transmission that the Central Communications Division directed to him

P G 202-17, Page 1, Paragraph 2 – PATROL SUPERVISOR  
DUTIES AND RESPONSIBILITIES

2 Lieutenant Alvin Gomez, assigned to the 114<sup>th</sup> Precinct, on or about November 1, 2008, while serving as a Patrol Supervisor, failed to properly supervise in that he failed to respond to a '10-13" radio run that involved an off-duty, uniformed member of the service (*As amended*)

P G 212-32, Page 1, Paragraphs 3-4 – OFF-DUTY INCIDENTS INVOLVING  
UNIFORMED MEMBERS OF SERVICE  
COMMAND OPERATIONS

P G 202-17, Page 1, Paragraphs 1-2 – PATROL SUPERVISOR  
DUTIES AND RESPONSIBILITIES

3 Lieutenant Alvin Gomez, assigned to the 114<sup>th</sup> Precinct, on or about November 1, 2008, while serving as a Patrol Supervisor, failed to conduct an investigation of a dispute that involved an off-duty member of the service

P G 202-17, Page 1, Paragraph 9 – PATROL SUPERVISOR  
DUTIES AND RESPONSIBILITIES

4 Lieutenant Alvin Gomez, assigned to the 114<sup>th</sup> Precinct, on or about November 1, 2008, while serving as Patrol Supervisor, failed to keep the platoon commander or desk officer notified of a dispute that involved an off-duty member of the service

P G 202-17, Page 1, Paragraph 19 – PATROL SUPERVISOR  
DUTIES AND RESPONSIBILITIES

5 Lieutenant Alvin Gomez, assigned to the 114<sup>th</sup> Precinct, on or about November 1, 2008, while serving as a Patrol Supervisor, failed to acknowledge a "10-13" radio run directed to him by the Communications Section involving an off-duty member of the service (*As amended*)

P G 202-17, Page 1, Paragraph 16 – PATROL SUPERVISOR  
DUTIES AND RESPONSIBILITIES

The Department was represented by Scott Rosenberg, Esq , Department Advocate's Office, and the Respondent was represented by James Moschella, Esq

The Respondent, through his counsel, entered a plea of Guilty to the charges in Disciplinary Case No 84609/08 and Not Guilty to Specification Nos 2, 3, and 5 in Disciplinary Case No 86119/10 The Department recommended that Specification Nos 1 and 4 in Disciplinary Case No 86119/10 be dismissed A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review

### DECISION

#### Disciplinary Case No 84609/08

The Respondent, having pled Guilty, is found Guilty as charged

#### Disciplinary Case No 86119/10

The Respondent is found Not Guilty

### SUMMARY OF EVIDENCE PRESENTED

#### The Department's Case

The Department called Sergeant John Dandola and Police Communications Technician Latasha Ortiz as witnesses The Department also offered the out-of-court official Department interviews of Police Officers Tyrone Grannum and Jonathan Montauredes Department's Exhibit (DX) 1 is an audio tape of the interviews and DX 1A and 1B are the transcripts of Grannum's interview and Montauredes' interview, respectively

Sergeant John Dandola

Dandola is a 12-year member of the Department currently assigned to the Patrol Borough Manhattan North Investigations Unit. He stated that he investigates misconduct involving "internal policy and protocol as it relates to employees of the Police Department."

Dandola testified that when he was assigned to the 28 Precinct he, at various times, worked as a patrol supervisor and a desk officer. He acknowledged that one of the duties of a patrol supervisor was to respond to disputes that involved off-duty members of the service. He added that when there are off-duty members involved in incidents, it is not sufficient for only police officers to respond to the scene.

Dandola testified that he received a misconduct case from the Internal Affairs Bureau (IAB) that involved a dispute between Police Officer [REDACTED] and a civilian named [REDACTED]. He stated that he interviewed [REDACTED] and was told that the incident between him and [REDACTED] occurred near the corner of his residence where [REDACTED] believed he was sideswiped by a SUV or a Suburban of some sort. Dandola was further told by [REDACTED] that "after possibly being hit by this car, the driver of that vehicle then confronted him on the sidewalk and they had an altercation of some sort." [REDACTED] further told Dandola that police officers did respond to [REDACTED]'s 911 call. [REDACTED] also called 911 during that incident.

As a result of the 911 call, Police Officers Montaures and Grannum from the 114 Precinct responded to the scene. Dandola testified that as part of the investigation he obtained a radio transmission report regarding this incident. Dandola stated that pursuant to that transmission, officers from the 114 Patrol Sector B (hereinafter "Sector B")<sup>1</sup> were assigned to the incident. The communication that was "put over the air" was that the

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<sup>1</sup> The 114 Precinct Sector B is also referred to as "114 Boy" or "Sector Boy" in the trial transcript.

incident involved a dispute regarding a vehicle accident. Dandola stated that “essentially, the additional communications adjusted the radio code after confirmation was made that an off-duty member of the service was involved in this incident and the radio code was changed to 10-13, meaning officer needing assistance.” He added that the original communication “was changed from a dispute with an accident or one of those codes. It was involved with the vehicle accident, and then when the code was changed to a 10-13, there were additional details given with that.” He stated that once the 10-13 was broadcasted the dispatcher put out the radio code and used language elaborating the fact that a member of service (MOS) or an off-duty MOS was involved in the incident. He further stated that the dispatcher “attempted to raise the 114 Lieutenant, the platoon commander for the tour was Lieutenant Gomez [the Respondent].” He stated that there was no response from Lieutenant Gomez to the dispatcher’s communication.

Dandola stated that as part of his investigation he interviewed Grannum and Montauderes (DX 1, 1A and 1B). Pursuant to Dandola’s interview, both officers told him that no patrol supervisor responded to the location of the incident between [REDACTED] and [REDACTED].

On cross-examination, Dandola testified that based on the 911 calls that were made, an initial radio dispatch from the Communications Division (“Central”) to the 114 Precinct patrol units was made. Referring to the 911 calls (DX 2 and 2A, a compact disc of the 911 call and a transcript of the call, respectively), Dandola acknowledged that on page 2 of DX 2A, the dispatcher was calling for “14 Boy,” indicating a particular sector in the 114 Precinct. Dandola acknowledged that the initial radio transmissions regarding the dispute between [REDACTED] and [REDACTED] did not mention the possibility of an off-duty member



being involved. He acknowledged that that transmission simply stated that there was a dispute at [REDACTED] 21 Avenue and that Sector B was being directed to that dispute. Dandola further acknowledged that it was not until later in the transmission (DX 2A, page 3) that the dispatcher mentioned the possibility of a member of the service being involved in that dispute. Dandola added that that transmission was not directed to a patrol supervisor, it was directed to the officers assigned to Sector B (Page 3, lines 16 and 17). Dandola stated that he was "not sure that he [a patrol supervisor] is supposed to respond. You have a responding unit and they are getting additional information regarding what kind of incident they are responding to." He acknowledged that at that point it was the responsibility of the police officers to respond to the situation to see what was going on and that it was not yet the responsibility of the patrol supervisor to respond to the location.

Dandola was then directed to page 4, line 3 of the transcript (DX 2A) where Central was again communicating with Sector B. Then on line 5, the dispatcher said, "Once again, be advised in regards to the dispute the code has been changed to a 10-13 at 2127." (Page 4, lines 5 and 6). Dandola stated that when the dispatcher mentioned that the code had been changed to 10-13, it did "not explicitly" mention that an off-duty member of the service was involved in the situation.

After reviewing DX 2A, page 4, lines 12 to 14, Dandola stated that "from reading the written language, it appears she is attempting to raise the 114 Lieutenant on the radio." From lines 12 to 14, he noted that the following was transmitted: "Dispatcher it's [REDACTED] 21<sup>st</sup> Avenue [REDACTED] 21<sup>st</sup> Avenue, between 21<sup>st</sup> and [REDACTED] street coming from

outside off-duty officer involved, no weapons, no injuries 114 Lieutenant read? 114 Lieutenant?"

Dandola was asked to explain what the dispatcher was saying and he explained that "the dispatcher is attempting to confirm that the 114 Lieutenant had heard the entire or the majority of that radio transmission " Dandola noted that the 114 Lieutenant did not respond to the dispatcher's transmission He further explained that "from what I am reading, there is no indication that the 114 Lieutenant had overheard this " When Dandola was directed to the Patrol Guide section 212-32 with regards to the patrol supervisor responding to an off-duty member of the service involved in a incident, Dandola stated that it is an "implied assumption" that the patrol supervisor has knowledge of the dispute in order to respond to it He acknowledged that Patrol Guide section 212-32 sets forth an obligation on the uniformed member of the service responding to the job, situation, or incident to notify the patrol supervisor about the incident Dandola stated that in this case, the responding officers did not notify the patrol supervisor being that they never actually requested a response from a patrol supervisor as per the Patrol Guide Dandola added that after interviewing Grannum and Montauderes, both these members never admitted to him that they never requested the response of a patrol supervisor and that they "were negligent in their responsibilities " Dandola also interviewed the Respondent and acknowledged that he told Dandola that he was unaware of the fact that there was an off-duty member of the service involved in this dispute

Dandola also interviewed Police Officer Balabous (the Respondent's driver) who told Dandola about hearing a 10-13 radio code, meaning that an officer was in trouble and that

they began to respond to the location. Started driving from their original location inside the confines of the 114 Precinct and began driving towards 21<sup>st</sup> Avenue of this incident location. He never actually responded to that, wherever this incident took place. He stated prior to arriving there he had heard a call no further, something to that effect. There are several interpretations to what that could mean. My interpretation would mean that the threat was sufficiently handled and there is no need for additional patrol units to respond. That could mean either the two individuals who arrived there could handle it, or the additional responding sectors were sufficient in numbers to handle whatever job was at hand.

He added that there was no indication that any of the responding units requested the response of a patrol supervisor to the location. Dandola stated that it was a 'fair statement' that Balabous told him that he was unaware that there was an off-duty member of the service involved in this dispute. Dandola also stated that Lieutenant Morales was a second supervisor who was working during that tour and he told Dandola that he recalled hearing a 10-13 but he never heard anything regarding a dispute involving an off-duty member of the service.

On re-direct examination, Dandola testified that Morales was not a patrol supervisor at the time of the incident, but was conducting anti-crime operations. When Dandola was asked if the Respondent was on the same frequency as Sector B, Dandola stated that he was supposed to monitor the same frequency.

Interview of Police Officer Tyrone Grannum (DX 1 and 1A)

Grannum was interviewed by Dandola regarding his and Police Officer Montauderes' response to the location of the off-duty member incident. Grannum stated that he and his partner "didn't call a supervisor" but in hindsight "we should have "

When he was asked if he had any conversations with any supervisors after "giving back a final disposition," he replied "No "

Interview of Police Officer Jonathan Montaures (DX 1 and 1B)

Montaures was also interviewed by Dandola regarding this case. He stated that when he arrived at the scene he wanted to see if there was an officer involved because the radio run came over as a 10-13. Once he met the off-duty member he asked him why did he "call a 13." The officer told him that the "guy was getting loud." The off-duty officer also told Montaures that he called his boss, leading Montaures to believe that he called a sergeant. Montaures stated that since the officer called a sergeant, "I thought that was sufficient. I know now that it is not and that I should have notified my supervisor." He also did not call the dispatcher to discuss whether the supervisor was on his way to the location. In addition, it was Montaures who told the dispatcher, "No further," meaning that no further officers were necessary. Montaures further stated that neither he nor Grannum talked to the Respondent after the incident was over.

Police Communications Technician Latasha Ortiz

Ortiz is a 17-year member of the Department, currently assigned as a tape technician in the Communications Division. Ortiz stated that at one point in her career, from 1994 to 1998, she was a radio dispatcher for the Department. She explained the contents of a transcript of a Department radio transmission for November 1, 2008 (DX 2A). She had previously reviewed the transcript with the tape (DX 2) and made edits to the transcripts to make them conform to the radio transmission.

Ortiz stated that in the first transmission with regard to this case, the dispatcher advised Sector B to respond to a dispute at [REDACTED] 21 Avenue upon completion [of their current assignment] The sector acknowledged the dispatcher by saying "10-4 " In a subsequent transmission, she stated that "the dispatcher then raises 114 Boy again the dispatcher states be advised in regards to the dispute at [REDACTED] 21<sup>st</sup> Avenue, a possible MOS involved " It was stipulated that the Sector B officer who responded to the dispatcher was Montaures

Ortiz stated that in the next transmission (page 4, line 5), the "dispatcher states once again be advised in regards to the dispute the code has been changed to a 10-13 at [REDACTED] And then the male officer interrupts She doesn't complete the location and he states, okay, I'm en route central " She stated that the dispatcher then asked for any [other] unit to respond to the job, whereupon an officer from the Grand Larceny Auto (GLA) Unit answered and the dispatcher repeated the address to those officers A subsequent transmission by the dispatcher, according to Ortiz, stated "It's [REDACTED] 21<sup>st</sup> Avenue [REDACTED] 21<sup>st</sup> Avenue between 21 Street and [REDACTED] Street Coming from outside States off-duty officer involved No weapons, no injuries 114 Lieutenant read 114 Lieutenant " Ortiz explained that when the dispatcher stated, 114 Lieutenant read," it meant, "Did you read what they are saying " Ortiz stated that the dispatcher did not get a response from the 114 Lieutenant At almost the same time that the dispatcher was trying to contact the 114 Lieutenant, the officer from Sector B stated to the dispatcher, I'll advise " Ortiz added that "in my experience, that usually means that the sector responding to the actual location will advise you [of] the condition once he gets there to let you know whether the boss is needed or not " She also stated that the dispatcher also

transmitted "'114 Crime, 114 Crime' which means she was trying to raise a crime unit " Ortiz acknowledged that this was for the 114 Precinct Crime Unit to respond to a 10-13 Ortiz further acknowledged that a 10-13 is a high-priority job and that is the reason why the 114 Precinct Crime Unit was being raised by the dispatcher

Ortiz testified that a subsequent transmission stated that "the voice which was 114 Boy, he comes over He says, '4 Boy, no further, okay ' That usually means he is 84' at the location, which means he is there, and there is no need to send any other units Sometimes too many units could make a situation not as good as it should be if I may say that She [the dispatcher] acknowledges She says, 10-4 no further [REDACTED] 21<sup>st</sup> Avenue, no further '" When asked by the Court if "no further" meant that the 10-13 no longer existed, Ortiz stated, "No Sir, no, sir, it just means there is no further units needed to that location " Ortiz stated that the officer from Sector B then notified the dispatcher that the job was "'90 yellow ' He is marking the job it's unnecessary " With regard to "90 yellow," Ortiz explained that " when a unit responds which is the unit that would be assigned and might be the first unit on the scene, they then let Central know it's unnecessary, meaning that it is not as severe as thought, or basically just advised with what they see as the officers responded " Ortiz further stated that "90 yellow" means that the 10-13 is over

On cross-examination, Ortiz stated that at the time that Montaures received the first transmission from the dispatcher, he was handling another job and that what the dispatcher was saying was that now there was a dispute at [REDACTED] 21 Avenue Ortiz acknowledged that when the dispatcher first assigned the job to Montaures, it did not seem that the job, a dispute, was a high priority because she told Montaures to go to it



after he had finished the job he was on. Ortiz also acknowledged that during the initial transmission of the dispute there was no mention that an off-duty member of the service was involved. It was not until later that the dispatcher advised Sector B that there was a possible off-duty member involved in the dispute. Ortiz agreed that at that point it was the sector patrol officers who were directed to the dispute and not a patrol supervisor. In a subsequent transmission, the dispatcher changed the dispute to a 10-13 and then it was mentioned that a possible off-duty member was involved.

Ortiz acknowledged that the 114 Precinct is very large geographically and it was not unusual for an officer to take more than five minutes to get from one end of the command to the other. Ortiz agreed that after the dispatcher re-designated the code to a 10-13, the Sector B officer told her that he was en route. Ortiz acknowledged that it was after the dispatcher was raising the GLA Unit that the dispatcher stated that an off-duty officer was involved, there were no weapons, and there were no injuries. It was right after that transmission that the dispatcher asked if the 114 Lieutenant "read" her transmission. She acknowledged that when the dispatcher was asking the 114 Lieutenant if he "read," she was asking the Lieutenant if he heard the information that she just transmitted about an off-duty officer being involved. Ortiz acknowledged that the dispatcher did not get any response from the lieutenant but she did get a response from the Sector B officer who then told the dispatcher that he would advise if a supervisor was necessary. Ortiz further acknowledged that the dispatcher never again attempted to raise the 114 Lieutenant in response to this incident.

On re-direct examination, Ortiz was then asked what would happen if the 114 Lieutenant was not in his car and did not hear the transmission. She stated

It is the dispatcher's duty to raise until he responds or finds a supervisor that can respond. In the normal course of business, a lot of times they are not available or don't hear the radio. They don't hear the radio or they are not available for different reasons, admin time, meal. Its just communications we have to communicate. You are telling me you are not available or on admin time and in a run down, again going by my experience, there is usually more than one supervisor available. So if one is not available, usually he or she notifies the other supervisors to let them know cover for me during this time because I am doing

Ortiz agreed that the dispatcher should have stayed on the radio until she got the supervisor

#### The Respondent's Case

The Respondent called Police Officer Nicholas Balabous as a witness and the Respondent also testified in his own behalf

#### Police Officer Nicholas Balabous

Balabous is a five-and-a-half-year member of the Department who is assigned the Respondent's driver. Balabous testified that at approximately 2100 hours on November 1, 2008, he was located on 41 Avenue and 21 Street. He stated, "Basically I was in the driver's seat of the car and the lieutenant [the Respondent] was outside of the car. He was checking on one of the posts over there. I believe it was a Sky Watch post for -- there was I think shootings there, that's why we generally have that Sky Watch post." Balabous explained that the Sky Watch post was "one of those cherry pickers basically. It stays up in the sky and there is a post down at the bottom to make sure no one tampers with the actual officer up in the sky. Basically, they watch over a video camera. They have the ability to zoom in and zoom out into certain areas." Balabous believed that at

2100 hours the Respondent was outside of the vehicle talking to the officer who was on that post.

When Balabous was asked if there was a point in time when a radio transmission came over with regard to a dispute on 21 Avenue, he stated

There probably was I did not actually hear anything with a dispute on 21<sup>st</sup> Avenue I mean, the radio in the 114 is so busy all the time, jobs constantly always coming over So to keep track of every single job is actually impossible But it is possible that a 52 did come over I didn't hear it. I didn't hear anything come over as a 52

Balabous stated that it is his job to monitor the radio to make sure that everyone is okay and also "if one of us misses something we can tell each other That's what basically anyone if I am working with a cop or a Lieutenant or a Sergeant basically to monitor the radio to make sure everyone is okay " When asked if a 10-52 that came over the radio would be something that he would notify the lieutenant of, he answered, "No, not necessarily " He explained that a 10-52 is a dispute between two people or a group of people He further explained, "It is not a priority It is not a priority job It's something that, you know, that type of job might come over 20, 25 times over the night It's basically just an argument "

Balabous stated that at one point a transmission came over that caught his attention a 10-13, officer needs assistance He believed the location was on 21 Avenue and maybe 21 Street When he heard the 10-13, he stated, "I get out of the car, I get the lieutenant, I tell him 10-13 Lou 10-13 " When asked if it appeared that the Respondent heard any of the transmissions pertaining to the 21 Avenue address, Balabous responded, "No, Sir " Balabous further testified that the Respondent jumped in the car and they headed to the location of the 10-13 He explained, "We were on the south end, all the

way basically on the border of the 114 Precinct, the south end of the precinct, and the actual 10-13 came over all the way on the north side, basically in the beginning of the north side of the 114 Precinct. So it was completely on the other side of the precinct."

Balabous stated that he and the Respondent never made it to the 10-13 location. While they were responding to the 10-13, he was not aware that the dispute involved an off-duty member of service. He also noted that he did not hear any radio communications of an off-duty member being involved in the dispute. When Balabous was asked if there came a point in time that they no longer responded to the 10-13, he stated, "Yes," and explained that the sector car had notified the dispatcher that they were "10-84," which meant that they had arrived on the scene. Balabous stated, "They came over the frequency and said, 'No 10-13. Have everyone disregard.' In that case, we shut the lights down and went back to the post. We went back to where we initially started from because we had the officer's memo book. We left in such a rush we had the officer's memo book."

Balabous noted for the Court that when he is en route to a 10-13, he drives on the wrong side of the road, goes back onto the right side of the road, and stops at every intersection to make sure that they do not hit another car but at the same time making a lot of noise with the air horn. He stated, "It's definitely going back and forth with oncoming traffic as long as no one is coming towards us. Just going around cars, especially for a 10-13, to just get there and get the help." Balabous also stated that he did not hear the dispatcher state that an off-duty member was involved, that there were no weapons and no injuries. He also did not hear the dispatcher state, "114 Lieutenant read,

114 Lieutenant ” When asked why he would not hear a radio transmission while responding to a 10-13, Balabous stated

Basically when responding to a 10-13, it's hard to not get into that tunnel vision type mode when you are just looking straight ahead. Sometimes it happens. I have one hand on the wheel and the air horn is basically on the dashboard, and I have to use my right hand to hold the air horn because you can't keep that as a constant sound. So I have to keep my hand on it with one hand on the wheel constantly asking my partner, how is the left, how is the right. You see anything coming, can I go, is it good.

Balabous testified that had he heard that the dispatcher was trying to reach the Respondent, he would have told him that the dispatcher was trying to reach him. When asked if he was curious about why the 10-13 was called off, he answered

Not really curious because jobs like this sometimes they come over. People state that they are cops all the time. So they said – the sector said, ‘No 10-13, have everyone disregard.’ At that point in time, I stopped driving as fast as I'm going, I put the lights off, I took my hands off the air horn, and proceed back to the post because we had the officer's memo book and we had to go and return it.

When asked if he heard the sector request the presence of a patrol supervisor Balabous stated, “No, Sir. The sector disregarded. No one asked us to come, no one needed us. They said, ‘Disregard, no further.’” When asked if he had received a transmission of an off-duty member 10-13 in a dispute with a civilian, would he have responded in the same way, Balabous stated, “The same exact manner. I would get there. Even if it wasn't a NYPD cop, if it was a cop from Suffolk County, Nassau County, I would still get there in the same manner. Whether it is an off-duty, had we known, I guess, yeah, we would respond to make sure everything is okay.” He stated that they would have responded “just to make sure everyone is okay.”

When asked by the Court if he had any knowledge that it was an off-duty MOS involved in a dispute with the civilian who was in need of assistance, Balabous stated, "No, Sir We didn't have any knowledge We just thought it came over as a 10-13 We heard it came over as a 10-13 A million things go through your mind What's the best way to get there, what time of day is it, what's the traffic like We just like -- we just go And when it gets called off, we slow down, and we listen to the radio to make sure everything is okay " Balabous added that had the Respondent known of the off-duty MOS, he would have gone

On cross-examination, Balabous stated that he did recall being at the Sky Watch post during the 10-13 incident even though during his official Department interview he did not remember where he was traveling from When he was asked who called off the 10-13, Balabous stated, "I believe it was Sector Boy It's Officer Montauderes and Officer Grannum " Balabous testified that when a 10-13 is over, the responding officers would not transmit on the radio that the 10-13 is actually over but if everything was okay, they would say, "No further " He stated that they would also say, "No further" if there was no need for additional units to respond

Balabous stated that the radio that he has is a handheld radio and that the Respondent also carried a handheld radio on November 1, 2008 He added that "our radios are always on "

#### The Respondent

The Respondent is a 16-year member of the service currently assigned to the 114 Precinct He stated that he is the third platoon commander and supervises sergeants and



police officers on the third platoon. The third platoon works from 1500 hours to 2300 hours. Balabous is his regular driver.

The Respondent testified that at approximately 2100 hours on November 1, 2008, he was signing the memo book of Police Officer Maglio who was assigned to the sky tower. He explained that the sky tower is a Department vehicle "with a box on it with tinted windows with cameras inside of it which is lifted up into the air in high crime locations designated throughout the city. Wherever we have a spike in crimes, we usually mobilize the vehicle for omnipresence to deter further violent crimes." He stated that on that day, Officer Maglio was "up in the sky." He explained that it is his responsibility to make sure the officer is up in the sky observing the surrounding area.

The Respondent stated that there is usually an officer in an RMP<sup>2</sup> protecting the officer in the sky vehicle. He stated, "As I'm signing the officer in the police vehicle in the bottom, the machine is slowly coming down making a noise as to alert anybody that's near that this machine is actually coming down. Be aware, stay away from it." He likened the noise from that vehicle to that of a truck or other vehicle backing up and making this loud beeping sound. As he was doing this, Balabous was still in the car.

While the Respondent did not specifically hear a radio transmission regarding a 10-52, the dispute on 21 Avenue, he stated that he would not normally respond to a dispute that comes over the radio. He explained, "Basically, I respond to violent crimes in progress or burglaries, which is basically a 10-30 is a robbery in progress, a 10-31 is a burglary in progress, a 10-32 is a larceny in progress, and an assault in progress. Those are violent crimes. And obviously, a 10-13." He further explained that "a 10-52 can be a dispute between a store and a customer. They are disputing that they didn't get the right

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<sup>2</sup> Radio motor patrol car

change back. It could be a dispute over a parking spot. It's just a dispute between two parties." He stated that on a given tour, they can easily handle 200 jobs a night and of that, 25 to 30 could be 10-52 disputes. He reiterated that he did not have any particular recollection of hearing a 10-52 in progress on 21 Avenue.

The Respondent stated that the 114 Precinct is a very large command. It covers Rikers Island and Roosevelt Island, and it goes from the Queensboro Bridge down to 20 Avenue where the Con Edison plant is. It also extends from Shore Boulevard under the Hell Gate Bridge and the Robert F. Kennedy (RFK) Bridge to Northern Boulevard. It covers parts of Long Island City, Astoria, Woodside and Jackson Heights. There are also four housing developments within the precinct's boundaries.

The Respondent testified that as he was signing the officer's memo book, Balabous came out of the vehicle and said, 'Lou, there is a 10-13.' I just ran back to the vehicle, sat down and we were off." When asked if, at that point when he knew it was a 10-13, he also knew that an off-duty member of service was involved, he replied, "Absolutely not." When he was further asked if it made a difference as far as his responsibility as a patrol supervisor in responding to the location whether it was an on-duty MOS or an off-duty MOS, he stated

It makes a big difference. The difference is that there is an off-duty MOS involved in an incident, it doesn't necessarily have to be a 10-13. It could be an off-duty incident. It could be an incident that they are arguing over parking. The other day, actually, before coming to this trial, I was involved in an off-duty incident where there was something where a car cut another car off to go in a gas station. It involved an off-duty member of the service from the 19 Precinct. I respond, I ascertain if he is fit to duty. There is a form that I fill out. Is he fit for duty, whether he was drunk, intoxicated, and then I usually order them back to the station house. And if my commanding officer, my

executive officer -- which is usually a captain or above -- is working, he will investigate it. If he is not working I have to call the duty captain, which is the duty captain assigned to my borough, and he will come down and investigate the situation.

He further explained that "my understanding was that Officers Montauderes and Grannum were in need of assistance. They were calling a 10-13, and the dispatcher was putting out a 10-13."

The Respondent stated that his radio is usually on

but in the vicinity where I was at, it's 21 Street. It's a two-way street where basically I can throw a stone and hit the 59 Street Bridge, which has traffic coming off of it. You have an elevated subway that goes past there, and you have the subway beneath us also. It's a very, very busy intersection. It's a noisy intersection. A lot of people like to get off the BQE exit, or the Grand Central Parkway exit on 31<sup>st</sup> Street and Hoyt, and proceed, I believe, east onto 21<sup>st</sup> Street to the 59<sup>th</sup> Street Bridge, Queensboro Bridge, to avoid the toll on the RFK Bridge to get to Manhattan and the Bronx.

The Respondent testified that his driver usually stays in the car so he can listen to the radio when he is outside in a noisy intersection. With regard to responding to the 10-13, he continued "We started responding to the 10-13 northbound on 21<sup>st</sup> Street. Officer Balabous was driving. He was hitting the horn. Windows were down. We usually like to keep the windows down so he can hear other police vehicles. There have been numerous tragedies involving officers responding to 10-13's and never making it there to help the officers in need. Tunnel vision, and you know." He stated that it would take at least four minutes to get to the location of the dispute involving the off-duty officer in this case. He stated, however, that they did not arrive there because "the sector that was 84, which was 84 means 'was present at the scene,' had already arrived, and they said no

further ” He further stated that he did not hear the transmission from the radio dispatcher stating “114 Lieutenant read, 114 Lieutenant ” He added, “If I would have heard that transmission, we would not be here today ” When asked what he would have done if he had responded to the scene, he stated that he would have observed the officer to see if he was fit for duty, he would have filled out a fitness for duty report, and ordered him back to the station house He would have also requested that the civilian come back to the station house and determined whether or not his commanding officer or executive officer was working so that they could investigate the incident He stated that during his four years as a lieutenant, he has investigated dozens of off-duty incidents

The Respondent reiterated that on November 1, 2008, when he ceased responding to the 10-13, he was not aware that the dispute involved an off-duty member of service He also stated that no other officer or sector requested the presence of a patrol supervisor at the scene of that dispute He added that had he known that the incident involved an off-duty member he would have “thoroughly investigated it ”

On cross-examination, the Respondent stated that one of his duties is to monitor the radio and the traffic at all times It is also part of his duties to respond to disputes that involve off-duty members of the service if they are confirmed ” He reiterated that he did not hear the transmission by the dispatcher when the dispatcher stated that an off-duty officer was involved and then said, “114 Lieutenant read, 114 Lieutenant ” He stated that when he was signing the officer’s memo book he had his handheld radio on his side When questioned about the amount of time that he stayed at the location signing the officer s memo book, he stated “I just don’t, you know, sign the memo book and run away I stay there and I talk about the situation and the reason that he is there ”

FINDINGS AND ANALYSISDisciplinary Case No 84609/08Specification Nos 1, 2, and 3

The Respondent is charged with failing to inspect his command's evidence/property room, the lieutenant's dormitory, the garage and bike sheds, and the effectiveness of assignments. He is also charged with failing to inspect the property locker and all areas within the command where invoiced property was being held, failing to inspect that property was properly invoiced and failing to take corrective action regarding the command's handling of property/evidence.

The Respondent, having pled Guilty to Specification Nos 1, 2, 3, is found Guilty as charged.

Disciplinary Case No 86119/10

Under Specification No 2, the Respondent is charged with, while serving as a patrol supervisor, failing to respond to a '10-13" radio run that involved an off-duty, uniformed member of the service. Specification No 3 charges the Respondent with failing to conduct an investigation of a dispute that involved an off-duty member of the service and Specification No 5 charges him with failing to acknowledge a '10-13" radio run directed to him by the Communications Section involving an off-duty member of the service.

Essentially, the charges in this case pertain to an incident involving an off-duty uniformed member and the Respondent's responsibilities in responding to and investigating the incident. Patrol Guide Section 212-32 states in relevant part that when

an off-duty uniformed MOS is involved in an unusual police occurrence where the member is "either a participant or a witness" then that member is to "remain at the scene" (when feasible) and "request [the] response of [a] patrol supervisor, precinct of occurrence " The patrol supervisor is then required to "respond to the scene and assess [the] situation and notify [the] desk officer of available details "

The Patrol Guide emphasizes that the response of a patrol supervisor should be requested by the member who is either a participant or a witness to the unusual police occurrence. This Court therefore finds that it is reasonable to conclude that the Patrol Guide acknowledges that the supervisor must have knowledge of the event in order for him or her to be required to respond to the incident. The mere fact that an incident involving an off-duty member has occurred does not, in and of itself, hold the Respondent, who was the on-duty patrol supervisor in this case, responsible to the mandates of this Patrol Guide section without him having knowledge of the occurrence.

This Court further finds that notifying the patrol supervisor of such an occurrence is not only the responsibility of the member involved in the event, it is also the responsibility of any responding officers. It is also important that the Communications dispatcher, who sends the request via the radio airwaves, clearly informs the patrol supervisor of the incident.

It is uncontested in this case that the Respondent did not respond to the location. What is in dispute is whether he had sufficient knowledge that an incident involving an off-duty member took place and was therefore required to respond to and investigate the occurrence.



According to the Department, Police Officer [REDACTED] became involved in an off-duty incident with [REDACTED] where it was alleged that [REDACTED] kicked [REDACTED]'s car and further alleged that [REDACTED] shoved [REDACTED] called 911 and stated that he was being shoved by a police officer [REDACTED] also called 911 [REDACTED] did not ask for the presence of a patrol supervisor

The Communications Division dispatcher initially notified the 114 Precinct Sector B patrol officers that there was a "dispute" at [REDACTED] 21 Street (DX 2)<sup>3</sup> There was no mention that the dispute involved an off-duty MOS The dispatcher, subsequent to the first broadcast, again stated that there was a dispute at the same address but this time she stated that there was "a possible MOS involved " During another broadcast, the dispatcher added that the dispute was now a "10-13" or officer needs assistance At this point there was no mention of an off-duty member being involved.

The dispatcher then stated that an "off-duty involved, no weapons, no injuries " And at this point, the dispatcher asked, "114 Lieutenant read -- 114 Lieutenant?" in an attempt to have the patrol supervisor, the Respondent, respond to the broadcast The dispatcher did not seek through a further broadcast to reach the patrol supervisor again

During this period, Officers Montaures and Grannum responded to the location Also during this period none of those officers responding to the scene requested the response of a patrol supervisor even after they became aware that an off-duty member was involved in the incident

Subsequently, a male officer radioed that no further assistance was necessary Another radio transmission followed that again stated that no further assistance was necessary and a "90 yellow" disposition was given, indicating that the 10-13 was over

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<sup>3</sup> All references to the dispatcher's radio transmissions are from DX 2 in evidence

It should be pointed out that during the transmissions regarding the off-duty member there were other transmissions taking place that involved separate incidents

Dandola told this Court that during his investigation he interviewed Grannum and Montaures (DX 1, 1A and 1B). They told him that they were the Sector B officers who responded to the dispute involving [REDACTED] and [REDACTED]. They told Dandola that no patrol supervisor responded to the scene and they did not request the response of a patrol supervisor. Dandola confirmed that the Respondent did not conduct any investigation regarding the matter. Montaures' explanation for not making the request was that when [REDACTED] told him that he called his command, Montaures took that to mean that he spoke to his sergeant and therefore there was no need to request the response of a supervisor at the scene. Both Montaures and Grannum admitted that they were wrong in not requesting that a supervisor respond to the scene.

Dandola further told this Court that [REDACTED] was the first to call 911 and based on his call the initial radio dispatch was made of a dispute with no injuries and no weapons. Dandola, who was familiar with the radio communication (DX 2), stated that Sector B responded to the dispatcher that they received the transmission. He also confirmed that the initial transmission did not make mention of an off-duty member involved in the dispute. Dandola acknowledged that it was not until a later transmission that mentions that a member was involved and even that transmission was not directed to the patrol supervisor. It was still directed to the 114 Precinct patrol units. Dandola then stated that, at this point, "I am not sure that he [the Respondent] is supposed to respond. You have a responding unit and they are getting additional information regarding what kind of incident they are responding to." He acknowledged that the response to that radio

transmission was to have only police officers respond, it was not yet the responsibility of the supervisor to respond

Dandola agreed that at one point the initial transmission was changed to a 10-13—officer needs assistance. Still at this point, he acknowledged that there was no mention of an off-duty member involved in the dispute.

Dandola further acknowledged that later in the transmission the dispatcher transmitted on the radio that an off-duty member was involved and then attempted to contact the 114 Precinct Lieutenant (the Respondent). Dandola explained that the dispatcher “is attempting to confirm that the 114 Lieutenant had heard the entire or the majority of that radio transmission.” He noted that the 114 Lieutenant did not respond, explaining that “from what I am reading, there is no indication that the 114 lieutenant had overheard this.”

When Dandola was asked if the patrol supervisor has to have knowledge of the dispute in order to respond as per the Patrol Guide, he replied, “It’s an implied assumption.” He acknowledged that the Patrol Guide places responsibility on the uniformed MOS responding to the scene to actually notify the patrol supervisor. He noted that the members who responded to the scene did not request the response of the patrol supervisor and added, “They were negligent in their responsibilities.” He also noted that when he interviewed the Respondent he was told that he was unaware of the fact that there was an off-duty MOS involved in the dispute.

Dandola also interviewed Officer Balabous, the Respondent’s driver, and he discussed hearing the 10-13 radio transmission. Balabous told Dandola that they began to respond to the location but they never got there because, prior to arriving, they heard a

transmission of "no further " Dandola took that transmission to mean that the threat was sufficiently handled and there is no need for additional patrol units to respond That could mean either the two individuals who arrived there could handle it, or the additional responding sectors were sufficient in numbers to handle whatever job was at hand ' Dandola acknowledged that Balabous told him that he was unaware that an off-duty member was involved in the dispute |

Ortiz, during her testimony, responded to similar questions regarding the dispatcher's transmissions After answering questioning regarding the initial transmission and the responding officers, she focused on the dispatcher's attempts to contact the 114 Lieutenant (the Respondent) She noted that the dispatcher did not get a response from the Respondent But Ortiz stated that as the dispatcher 'is raising the 114 Lieutenant, right after that, again in listening to the CD, the voice sounded like 114 Boy He states to her, Central, I'll advise In my experience, that usually means that the sector responding to the actual location will advise you the condition once he gets there to let you know if the boss is needed or not '

Ortiz testified that the dispatcher then transmitted the code, 10-13, and asked for crime units to respond There is then a transmission that stated, "4 boy, no further which Ortiz interpreted to mean "that he is 84 at the location, which means he is there and there is no further need to send any other units Sometimes too many units can make a situation not as good as it should be |" The dispatcher then acknowledged "10-4 no further, [REDACTED] 21<sup>st</sup> Avenue, no further .means there is no further units needed to that location" but that did not mean the end of the 10-13 A subsequent transmission from Sector B stated, "90 yellow," which, according to Ortiz

is marking the job that it's unnecessary [which] normally it means that when you call 911 or a code is put in the system based on a situation, in this instance a 10-13, when the unit responds which is the unit that was assigned and might be the first unit on the scene, they then let Central know it's unnecessary, meaning that it's not as severe as we thought, or they basically just advise you what they see as the officers responding

She added that "90 yellow" means the 10-13 is over

Ortiz acknowledged that it was five minutes between the time the 10-13 was called and then called off, and that it would not be unusual for it to take an officer more than five minutes to get from one end of the command to the other end. With regard to the dispatcher's attempt to contact the 114 Lieutenant, Ortiz acknowledged that the dispatcher, in a span of four seconds, asked the 114 Lieutenant if he heard the transmission she gave to the GLA Unit of repeating the address and stating that there was an off-duty MOS involved. Ortiz noted that the 114 Lieutenant did not respond and the dispatcher never again attempted to contact the 114 Lieutenant. She added that "it is the dispatcher's duty to raise [the 114 Lieutenant] until he responds or finds a supervisor that can respond." The dispatcher should keep asking for the lieutenant until he responds because "[i]n the normal course of business, a lot of times they are not available or don't hear the radio. They don't hear the radio or they are not available for different reasons, admin time, meal. It's just communications we have to communicate. So if one is not available, usually he or she notifies the other supervisor to let them know cover for me during this time." In Ortiz's opinion, the dispatcher should have continued calling for the 114 lieutenant until he answered.

Balabous and the Respondent testified as to what they heard and understood the dispatcher's radio transmissions to mean and how they responded.

Balabous testified that the Respondent was not in the car with him when he heard the transmissions. The Respondent was checking on the officers who were involved in the Sky Watch post. This post involves an officer locating himself in a cherry picker-type bucket that is elevated above traffic to monitor an area for possible criminal activity. One officer is in the bucket and the other is situated on the ground to protect the officer in the air.

Balabous stated that he did not hear any transmission involving a dispute on 21 Avenue because "the radio in the 114 is so busy all the time, jobs constantly always coming over. So to keep track of every single job is actually impossible. But it is possible that a 52 [dispute] did come over. I didn't hear it. I didn't hear anything come over as a 52." He stated that a 10-52 is not something that he would notify the Respondent about. He defined a 10-52 as a dispute "between two people or a group of people. Could be just basically someone is having a dispute with someone else. It's not a priority job. That type of job might come over 20, 25 times over the night. It's basically an argument."

At one point, Balabous heard a 10-13, "a cop needed help," come over the air. The location of the incident was on the south side of Queens and they were located on the north end. He exited the car and went to the Respondent and told him of the 10-13. It did not appear to him that the Respondent heard the transmission. Once they were both back in the car, Balabous activated the vehicle's lights and instead of the siren he opted to use the air horn to get cars and people to move out of their way. At this point, he had not heard any transmissions about an off-duty member involved in the dispute.



Balabous stated that as they were on their way to the scene "they came over the frequency and said no 10-13. Have everyone disregard. In that case, we shut the lights down and went back to the post."

Balabous stated that prior to hearing the 10-13, he did not recall hearing any prior transmissions involving an off-duty officer involved in a dispute at [REDACTED] 21 Avenue. He explained, "Well, basically, I mean, I am just trying to get to that job. I have my hand on the air horn, I'm driving. I am not really paying attention to it." He also did not hear the dispatcher calling for the Respondent. He added, "Where it is an off-duty, had we known, I guess, yeah, we would respond to make sure everything was okay" even though the 10-13 was called off, "just to make sure that everyone is okay." In a 10-13 situation involving on-duty officers, he stated, "Generally that happens a lot because 10-13 really doesn't last that long. So when we go to a 10-13 and it gets called off, we will take a slow ride or stay in the area just to make sure they don't need help again. Generally once it gets called off we don't really go anymore." He added that he and the Respondent did not have any knowledge that an off-duty member was involved. "We just thought it came over as a 10-13." He believed that the 10-13 was for "a working on-duty cop."

The Respondent testified that at about the time the transmission began (2100 hours)<sup>4</sup> he was signing the memo book of Officer Maglio, who was assigned to the sky tower. The Respondent explained that his "responsibility is to make sure that the officer is in the air, up in the sky observing the surrounding area." Between the noise coming from the alarm to alert people that the sky box machine was lowering and the noise from intersection traffic in the area and the elevated trains, he did not hear the

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<sup>4</sup> The SPRINT (Special Police Radio Inquiry Network) report (DX 3) provides the times of the dispatcher's radio transmissions. The first transmission relevant to this case was made at 2100 hours.

transmissions. He relied on Balabous, who was in the car, for that task. He stated that he responds to violent crimes in progress such as robberies or assaults, but he does not have to respond to 10-52 disputes.

The Respondent stated that at one point, Balabous came to him and said that there was a 10-13. He then 'just ran back to the vehicle, and you know, sat down and we were off.' When he was asked if he was aware that an off-duty member was involved, he replied 'Absolutely not.' When he was further asked if it made a difference in his responsibility as a patrol supervisor if the 10-13 involved an off-duty member, he replied, 'It makes a big difference. The difference is if there is an off-duty MOS involved in an incident, it doesn't necessarily have to be a 10-13. It could be an off-duty incident. It could be an incident they are arguing over parking. If an off-duty member is involved he has to 'ascertain if he is fit for duty. There is a form to fill out. Is he fit for duty, whether he was drunk, intoxicated, and then I usually order him back to the station house.'

On this particular day, it was his understanding that Montauredes and Grannum were in need of assistance. He stated that Balabous told him that 'they were calling a 10-13 and the dispatcher was putting out a 10-13.' When they were rushing to the location Balabous was driving and hitting the horn. The windows were down to hear other police vehicles and their focus was on getting to the scene. The Respondent stated that they never arrived at the location because 'the sector that was present at the scene, had already arrived and they said, 'No further.' He stated that he did not hear the transmission that an off-duty member was involved and added, 'If I would have heard the transmission, we would not be here today.' He further added that had he known that an

off-duty member of the service was involved he would have responded to determine if he was fit for duty, ordered him back to the station house, and requested that the civilian also go to the station house. He would have also commenced an investigation.

Based on the foregoing, this Court finds that the Respondent's failure to respond to the scene of the dispute involving an off-duty officer was not the result of his negligence or misconduct. It was due to an apparent breakdown in the responsibilities of responding officers to notify him and in the dispatcher's failure to ensure that she continued in her attempt to reach him over the radio to inform him of the situation.

Accordingly, the Respondent is found Not Guilty of Specification Nos. 2, 3 and 5.

The Respondent was also charged under Specification No. 1 with having failed to immediately respond to a "10-13" radio transmission that the Communications Division directed him to. He was also charged under Specification No. 4, that while he served as a patrol supervisor, he failed to keep the platoon commander or desk officer notified of a dispute that involved an off-duty member of service.

The Department amended the original charges in this case, prior to trial. The amended version indicated that Specification Nos. 1 and 4 "shall be dismissed." Based on the foregoing analysis, this Court concurs with the Department's application that Specification Nos. 1 and 4 should be dismissed.

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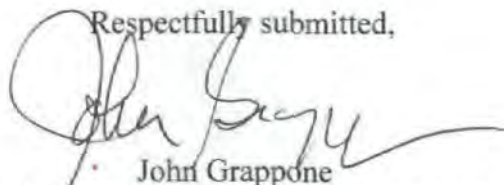
PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222, 240 (1974). The Respondent was appointed to the Department on February 28, 1994. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has pled Guilty to failing to inspect his command's evidence/property room, the lieutenant's dormitory, the garage and bike sheds, and failing to evaluate the effectiveness of assignments. He also pled Guilty to failing to inspect the property locker and all areas within the command where invoiced property was being held, failing to inspect and ensure that property was properly invoiced, and failing to take corrective action regarding the command's handling of property and/or evidence. This Court agrees with the Department's recommendation that the Respondent should forfeit a penalty of 10 vacation days.

Accordingly, this Court recommends that the Respondent forfeit a penalty of 10 vacation days.

Respectfully submitted,



John Grappone  
Assistant Deputy Commissioner - Trials



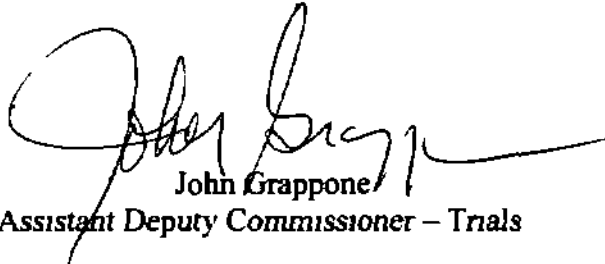
POLICE DEPARTMENT  
CITY OF NEW YORK

From Assistant Deputy Commissioner – Trials  
To Police Commissioner  
Subject CONFIDENTIAL MEMORANDUM  
LIEUTENANT ALVIN GOMEZ  
TAX REGISTRY NO 906355  
DISCIPLINARY CASE NOS 84609/08 & 86119/10

On the last three performance evaluations contained in his personnel file, the Respondent received ratings of 4.0 "Highly Competent," 4.0 "Highly Competent," and 4.5 "Highly Competent." The Respondent has been awarded seven Excellent Police Duty medals and one Meritorious Police Duty medal.

The Respondent has no prior disciplinary record.

For your consideration

  
John Grappone  
Assistant Deputy Commissioner – Trials